

IN THE UTAH COURT OF APPEALS

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Helen Marasco,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20070998-CA
v.)	
)	F I L E D
Joane Pappas White,)	(November 28, 2008)
)	
Defendant and Appellee.)	2008 UT App 427

Seventh District, Price Department, 060701108
The Honorable James L. Shumate

Attorneys: William R. Hadley, Salt Lake City, for Appellant
Michael F. Skolnick, Salt Lake City, for Appellee

Before Judges Greenwood, Billings, and Davis.

BILLINGS, Judge:

Plaintiff Helen Marasco appeals the trial court's grant of summary judgment in favor of Defendant Joane Pappas White and dismissal of Marasco's attorney malpractice action against White. Marasco asserts that the trial court erred when it determined that the findings of fact and conclusions of law, entered following the trial of the underlying lawsuit on other legal issues, preclude Marasco's claims of mistake and fraud.¹

White represented Marasco as her attorney. Marasco claims that she retained White to recover certain real property that Marasco conveyed by quit claim deed to her son, Terry Marasco (Terry). Marasco asserts that White did not timely file a lawsuit on Marasco's behalf against Terry. According to Marasco, by the time she retained substitute counsel, the statute of limitations had run on her claims of mistake and fraud. Still, Marasco pursued her lawsuit against Terry to rescind the quit

1. Marasco also argues that the trial court's findings of fact and conclusions of law in the underlying case "are at the least confusing, vague[,] and inconsistent." However, Marasco did not argue this below, and we therefore do not address it on appeal. See Pugh v. Draper City, 2005 UT 12, ¶ 18, 114 P.3d 546.

claim deed, asserting various causes of action, including mistake and fraud. The trial court dismissed Marasco's mistake and fraud claims as time-barred and rejected Marasco's undue influence, unjust enrichment, breach of fiduciary duty, constructive trust, and quiet title claims on their merits.

Marasco then brought a lawsuit against White for attorney malpractice. To prevail on an attorney malpractice action, the aggrieved client must prove a "case within a case." See, e.g., Glencore, Ltd. v. Ince, 972 P.2d 376, 379-80 (Utah 1998). Specifically, not only must Marasco show that White was negligent in allowing the statute of limitations to run on Marasco's mistake and fraud claims but also that Marasco would have prevailed on those claims had it not been for White's negligence. We conclude that Marasco's malpractice cause of action against White fails because the trial court's findings of fact and conclusions of law in the underlying case preclude Marasco from relitigating the specific facts and issues that are necessary for her to succeed on her mistake and fraud claims.

Marasco argues that issue preclusion does not apply to her mistake and fraud claims because those claims were not fully adjudicated in the underlying case. Issue preclusion applies when the following elements are satisfied:

- (i) the party against whom issue preclusion is asserted must have been a party to or in privity with a party to the prior adjudication;
- (ii) the issue decided in the prior adjudication must be identical to the one presented in the instant action;
- (iii) the issue in the first action must have been completely, fully, and fairly litigated; and
- (iv) the first suit must have resulted in a final judgment on the merits.

Oman v. Davis Sch. Dist., 2008 UT 70, ¶ 29, 194 P.3d 956 (internal quotation marks omitted). Specifically, Marasco argues that the second, third, and fourth elements of issue preclusion have not been satisfied because the mistake and fraud claims are not identical to the claims that were addressed in the underlying case and because her mistake and fraud claims were not fully litigated to a final judgment on the merits in the underlying case.

However, Marasco "confuses issue preclusion with claim preclusion." Id. ¶ 31. Essentially, she argues claim preclusion--that her mistake and fraud claims were not fully litigated in the underlying case--under the rubric of issue preclusion. But it is the doctrine of issue preclusion that

ultimately bars her attorney malpractice action. "While claim preclusion corresponds to causes of action, issue preclusion corresponds to the facts and issues underlying causes of action." Id. "[I]ssue preclusion . . . prevents parties or their privies from relitigating facts and issues in the second suit that were fully litigated in the first suit." Id. (omission in original) (internal quotation marks and citation omitted). It is of particular importance in this case that "where two causes of action embody the same dispositive issue, a prior determination of that issue in the context of one cause of action can have a preclusive effect in later litigation regarding the other cause of action." Id.; see also Restatement (Second) of Judgments § 27 (1982) ("When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.").

In the underlying case, the trial court dismissed Marasco's claims of undue influence, unjust enrichment, breach of fiduciary duty, constructive trust, and quiet title on the merits. In dismissing these causes of action, the trial court entered the following specific findings and conclusions:

[Terry] did not instruct [Marasco's lawyer] as to the legal description [of the property to be conveyed], and [Terry] never looked at the legal description or saw the deed until he saw it in connection with the present legal action.

. . . .
When . . . Marasco signed the deed, she believed she had signed [the property] to Terry . . . , [which property] included both the residence and the farm.

. . . .
There is no suggestion of undue influence or unfair conduct by Terry . . . in connection with any of the events surrounding the decision to make the deed or the signing of the deed.

. . . .
As a result of [an] argument [between Marasco and Terry, Marasco] changed her mind about Terry having the [p]roperty. The real reason for this action [to rescind the quit-claim deed] is that [Marasco] is angry at [Terry] about what he said in that argument.

. . . .

The [c]ourt concludes that it was [Marasco's] intent and her own will to transfer the [p]roperty to [Terry] and that [Terry] met his burden of proof to show no actual undue influence.

[Terry] did not do anything that was unfair and did not take unfair advantage of [Marasco].

(Emphasis added.)

Although the trial court did not rule on the merits of Marasco's mistake and fraud claims, it did make specific findings regarding essential elements of those claims. Mistake is defined as "a non-negligent but erroneous mental condition, conception, or conviction induced by ignorance, misapprehension, or misunderstanding, resulting in some act or omission done or suffered by one or both parties, without its erroneous character being intended or known at the time." Utah Coal & Lumber Rest., Inc. v. Outdoor Endeavors Unlimited, 2001 UT 100, ¶ 20, 40 P.3d 581 (internal quotation marks omitted). In the underlying case, the trial court held that "[w]hen . . . Marasco signed the deed, she believed she had signed [the property] to Terry . . . , [which property] included both the residence and the farm." The trial court further found that "it was [Marasco's] intent and her own will to transfer the [p]roperty to [Terry]." Finally, the trial court determined that the real reason for Marasco's desire to avoid or rescind the quit claim deed was that she "changed her mind about Terry having the property" after she and Terry had an argument. These findings preclude Marasco's mistake claim because under these facts she cannot prove that the conveyance of the property to Terry was "induced by ignorance, misapprehension, or misunderstanding," id., or that the character of the quit claim deed was unintended or unknown at the time she signed it.

To prove fraud, a plaintiff must show the following:

- (1) a representation;
- (2) concerning a presently existing fact;
- (3) which was false;
- (4) which the representor either (a) knew to be false, or (b) made recklessly, knowing that he had insufficient knowledge upon which to base such representation;
- (5) for the purpose of inducing the other party to act upon it;
- (6) that the other party, acting reasonably and in ignorance of its falsity;
- (7) did in fact rely upon it;
- (8) and was thereby induced to act;
- (9) to his injury and damage.

Andalex Res., Inc. v. Myers, 871 P.2d 1041, 1046 (Utah Ct. App. 1994) (internal quotation marks omitted). Again, we look to the trial court's findings that Marasco knew the extent of the conveyed property when she signed the quit claim deed and that Marasco's real reason for suing Terry was the argument she had with him. The trial court also found "no suggestion of . . . unfair conduct by Terry . . . in connection with any of the events surrounding the decision to make the deed or the signing of the deed." According to the trial court, Terry "did not engage in any conduct or practice with the intent to deceive or wrongfully deprive [Marasco] of her property" and did not "do anything that was unfair." These findings and conclusions preclude Marasco's fraud claim because they prevent her from proving the elements of fraud. Specifically, under these facts, Marasco cannot prove that Terry knowingly or recklessly made false statements upon which Marasco relied when she signed the quit claim deed.

In sum, the trial court's findings and conclusions preclude Marasco's mistake and fraud claims; she cannot relitigate the findings and rulings that are necessary to succeed on her mistake and fraud claims. Thus, she cannot sustain her attorney malpractice action against White.

Accordingly, we affirm.

Judith M. Billings, Judge

WE CONCUR:

Pamela T. Greenwood,
Presiding Judge

James Z. Davis, Judge